

\*\*\* Similar decisions were pronounced, 27th November 1685, M'Intosh against Robertson, No 2. p. 9619, *voce* PARENT and CHILD; and 9th February 1699, Earl of Northesk against Lord Phinhaven, No 30. p. 5196, *voce* GROUNDS and WARRANTS.

No 155.

\*\*\* The like was found with regard to an obligation in a father's contract of marriage to secure a sum named to himself and wife in conjunct fee and liferent, and to the heirs and bairns of the marriage in fee; 15th June 1737, Stenhouse against Young, *see* APPENDIX.

1680. June 22.

Dame LILIAS SETON, and Sir JAMES RAMSAY of Logie, her Husband, *against* GEORGE SETON of Barns.

DAME LILIAS SETON, and Sir James Ramsay of Logie, her husband, pursue George Seton of Barns, her brother, for L. 900 Sterling, promised to her by her father, Sir John Seton, in a letter to her. *Alleged*, The letter is conditional, as shall appear by a writ under his hand, which is not produced, and *non creditur referenti nisi constet de relato*; 2do, It bears, "In case I die before you be married, and your tocher paid;" but *ita est*, she was married in her father's lifetime, and he gave 10,000 merks of tocher with her, and got a discharge of it. This being reported, "the LORDS find, the father having after the date of the letter met with his daughter, and married her, and provided her to a competent tocher, the letter does not oblige; and therefore assoilzied."

No 156.  
Found in conformity to  
Cockburn *a-*  
*gainst* Cam-  
busnethan,  
*supra.*

1680. July 1.—IN the action Dame Liliat Seton against Barns, (22d June 1680.) being beaten from the letter, they recurred to a new claim, viz. the 5000 merks contained in her infestment, which albeit it carried that same quality of the missive, viz. that it should be void and null when she was married and her tocher paid, yet it behoved to remain as a debt, because, by an agreement betwixt this Barns and his father, he did take his father expressly obliged to purge and obtain her renunciation of that infestment, which he never would have done, if he had looked upon it as a right satisfied and extinct.—*Answered*, That infestment is *res hactenus judicata*, and out of doors by a decret absolutor *in foro*, obtained by Barns against it in 1663; and this new allegiance on the contract betwixt his father and him was competent then, and being omitted, cannot be proponed now; and cannot be said to be emergent, or *noviter veniens notitiam*; see an express and solemn decision on this, 20th January 1631, Gordon, *voce* PROCESS. 2do, *Esto* the allegiance were receivable, (as it is not) *nullo modo relevat*; for there is nothing more ordinary

No 156. for provident men than to take obligations *ad majorem cautelam* to procure renunciations of rights though paid; and Barns took the same for his other two sisters their infeftments, as well as this. This being reported, "the LORDS found it competent and omitted, and therefore assoilzied." Thereafter she gave in a bill, and reformed her allegiance thus, viz. That they offered to prove by that contract in Barns's own hands, he accepted the right of the estate, with the burden of her infeftment, and that *eo nomine* to get a renunciation of it, he granted his father a power to burden the estate with 10,000 merks. This was found relevant of consent; but the contract bears no such thing, but, on the contrary, hath an express declaration, that nothing therein contained shall be a homologation or acknowledgment thereof; so that if it was satisfied before this contract, it draws no force nor ratification from it.

*Fol. Dic. v. 2. p. 146. Fountainhall, v. 1. p. 103. & 105.*

No 157.

Found again  
in conform-  
ity with  
Cockburn a-  
gainst Cam-  
busnethan.

1680. June 29.

YOUNG *against* PAPE & VANS.

UMQUHILE James Crawford, goldsmith in Edinburgh, having had two wives, and a daughter by the second wife, called Margaret, he gave her a bond of provision of 12,000 merks, on this narrative, that he had disposed some tenements to the eldest son of the first marriage, which would have fallen to Margaret, if he had not disposed them; thereafter, he contracts the said Margaret to William Hog, and disposes with her some tenements and acres in Edinburgh; and thereafter, he disposes to James Hog, his grandchild of that marriage, some of the same tenements wherein James was infeft, and after him, his brother William, as heir, who disposed the same to Mr John Pape; but Thomas Young adjudges the said tenements, and the bond of 12,000 merks, as creditor to William Hog the father, and thereupon pursues reduction of the right granted by Crawford, the common author, upon this reason, that Crawford's disposition to young Hog his oye, was without a cause onerous, in defraud of old Hog his goodsire, his lawful creditor by the contract of marriage, as also as having right *jure mariti* to the bond of 12,000 merks, granted by Crawford to his daughter Margaret Crawford, spouse to William Hog. The defender *alleged*, Absolvitor from the reason, in so far as it is founded upon the bond of 12,000 merks, as being evacuated by the posterior contract of marriage, wherein the tenement is disposed in tocher to the same daughter to whom the bond was granted, and so is presumed to be in full satisfaction of any former provision granted by her father, *quia debitor non præsumitur donare*. It was *answered*, That that brocard holds not in provisions to children, to whom it is ordinary to give several bonds of provision, and to take them in the children's name, which are never presumed to be in satisfaction of former bonds, unless it were so expressed, and Hog's contract does not bear in satisfaction of former provisions. It was *replied*, That though the presumptions hold not ordinarily in